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Supreme Court of the United States

OCTOBER TERM, 19.....

No. 1272

JACK C. FRUGE,

Petitioner,

versus

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF LOUISIANA

SAM J. D'AMICO
Reymond Building
Baton Rouge, Louisiana 70801

ROBERT L. KLEINPETER,
Trial Attorney
Of Counsel

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SUPREME COURT OF THE UNITED STATES
March Term, 1968

No._____

JACK C. FRUGE

Petitioner,

VS.

STATE OF LOUISIANA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Jack C. Fruge, with respect shows unto the Honorable Court as follows:

1.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW.

The opinion rendered by the Court below is reported in _____La. _____, 204 So. 2d 287.

2.

GROUNDS FOR THE COURT'S JURISDICTION

The decree sought to be reviewed was rendered and entered on November 6,

1967, with a refusal of rehearing on December 11, 1967. By motion granted on December 14, 1967, a stay order was entered and petitioner was granted 90 days from that date to make application for writs of certiorari to this Honorable Court. The jurisdiction of this Honorable Court is invoked under Article III, Section 2, the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, and 28 USCA 1257(3).

3.

QUESTIONS PRESENTED FOR REVIEW

Whether petitioner was subjected to an unreasonable search and seizure by a surreptitious recording of a conversation between petitioner and the District Attorney when petitioner intended to talk in confidence and alone; whether petitioner was forced to incriminate himself and was denied due process of law because of the tactics utilized by the District Attorney in obtaining a statement without giving sufficient warning and by taking unfair advantage of petitioner when the District Attorney knew or should have known that petitioner was under investigation.

4.

CONSTITUTIONAL PROVISIONS INVOLVED

a. "The right of the people to be secure in their persons . . . . against unreasonable searches and seizures shall not be violated . . . . but upon probable cause, supported by oaths or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." United States Constitution, Fourth Amendment.

b. "No person shall be held to answer for a capital or otherwise infamous crime . . . . nor shall be compelled in any criminal case to be a witness against themselves, nor be deprived of life, liberty or property, without due process of law;" United States Constitution, Fifth Amendment.

c. ". . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." United States Constitution, Fourteenth Amendment, Section 1.

MAY IT PLEASE THE COURT:

5.

STATEMENT OF THE CASE

Petitioner, a practicing attorney and State Senator in the State of Louisiana, was indicted and charged with having committed the crime of theft of $190.00, being the property of the State of Louisiana, in a bill of indictment returned on the 19th day of May, 1964 in the matter entitled "State of Louisiana v. Jack Fruge", Docket No. 50,344, Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana. The crime was alleged to have been committed on or about the 30th day of May, 1963, when petitioner allegedly aided and abetted one Eloise Stegall in obtaining money from the State of Louisiana by virtue of fraudulent practices.

As a member of the Louisiana

Legislature, petitioner was entitled to a secretary of his own choice subject only to the approval of the presiding officer of the State Senate. Eloise Stegall was a classified employee with permanent status with the State of Louisiana but desired additional employment. In order to avoid the statutory prohibitions against dual office holding, payroll padding and public payroll fraud, Eloise Stegall submitted the name of a friend, together with social security number, and obtained employment as the secretary to petitioner under a name of another person. The checks were received and cashed by Eloise Stegall but with the knowledge of the person whose name was used.

Difficulties were encountered in reporting federal income tax and the individual whose name was used then complained to the District Attorney's Office. An investigation followed with a detailed statement being taken from Eloise Stegall on May 1, 1964, after all warnings had been given. Petitioner was informed of the investigation involving Eloise Stegall and on May 2, 1964 contacted the District Attorney in an effort to set up a conference but it was not until Monday morning, May 4, 1964 at 9 o'clock a.m. that a conference was arranged in the office of the District Attorney. Prior to petitioner's arrival, the office was bugged and arrangements made to record all statements.

The statement was objected to by a motion to suppress filed in advance of trial, Appendix A for the reasons (1) That the statement was not voluntarily made; (2) That they were surreptitiously obtained without any notice or knowledge on the part of petitioner; (3) That petitioner was without counsel and (4)

Violated his privilege against self-incrimination.

The motion to suppress was overruled by the Trial Court and the recorded conversation, together with a typewritten transcript of the same, were admitted over objection of counsel for petitioner. In disposing of these objections, the Supreme Court of Louisiana held:

> "Counsel for the defendant contends that this so-called confession cannot be said to have been voluntarily made under these circumstances, claiming the mere fact it was not induced by a promise or threat is not enough where it is secured unfairly, because a confession can only be voluntary in law if, and only if, it is voluntary in fact. He cites State v. Henry, 196 La. 217, 198 So. 910; and State v. Graffam, 202 La. 869, 13 So.2d 249.
>
> "From a reading of the transcription of this conversation, it is clear that the Senator had no idea at the time that the investigation involved him personally. It is equally clear that he approached the District Attorney in the belief that as a fellow lawyer, and because of their personal friendship, together with the further fact the State had suffered no loss due to the actions of Miss Stegall, he could convince the District Attorney to use his good offices in not prosecuting Miss Stegall, and thus protect him and his family from the unfavorable publicity that would ensue."

The Court then concluded "While it may be said that these statements resulted

from defendant's misplaced confidence, there is nothing about them to impugn their voluntary character." Thus, the Court completely overlooked the fact that petitioner was talking in confidence with the hope of some gain and was never warned or advised by the District Attorney that the investigation directly involved petitioner although a complete statement had been taken on May 1, 1964 from Miss Stegall involving petitioner as a principal.

In disposing of the federal questions presented, the Supreme Court of Louisiana observed:

> "It would be different if the recording device had been secretly installed in the Senator's office, home, or automobile, or conceivably, upon his person. That would involve an invasion of his privacy, a trepass which would present constitutional questions of grave import. Here, however, it was Senator Fruge who sought the District Attorney in his office. See Lopez v. United States, 373 U.S. 327, 88 S.Ct. 1381, 10 L. Ed.2d 462."

The United States Supreme Court recently held in Katz v. United States, 88 S. Ct. 507 (October Term, 1967) that:

> "For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. See Lewis v. United States, 385 U.S. 206, 210; United States v. Lee, 274 U.S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally

protected. See Rios v. United States, 364 U.S. 253; Ex parte Jackson, 96 U.S. 727, 733."

The Court concluded in Katz that "what he sought to exclude when he entered the booth was not the intruding eye -- it was the uninvited ear." The Court of Appeal, Seventh Circuit, recently held in U.S. v. Hagarty, the decision being rendered on January 11, 1968 and as yet unreported, that a conversation recorded in the office of an Internal Revenue Service investigator was inadmissible and relied on Katz by observing:

> "The key is whether defendant sought to exclude 'the uninvited ear.' Under this rationale, it is immaterial that the overheard conversation took place in an IRS Office. The Fourth Amendment applies 'wherever a man may be * * *.'"

In Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489 (1964), this Court held that "The admissibility of a confession in a state criminal prosecution is tested by the same standard applied in federal prosecutions since 1897 . . . Under this test, the constitional inquiry is not whether the conduct of state offices in obtaining the confession was shocking, but whether the confession was 'free and voluntary...'"

In Rochin v. California, 342 U.S. 165, 72 S.Ct. 205 (1952), this Court held:

> "Due process of law, as a historic and generative principle, precludes defining, and therefore confining these standards of conduct more precisely than to say that conviction cannot be brought about by methods that offend a sense of justice."

The facts of the instant case arose prior to the decisions in Escobedo v. State of Illinois, 378 U.S. 478, 84 S.Ct. 1758 (1964) and Miranda v. State of Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966) and is clearly distinguishable from those cases but on the other hand presents a problem at the opposite extreme. Petitioner in the instant case was a practicing attorney of many years standing; an elected state official occupying the office of State Senator, as well as being a member of the State Board of Education from his home district. Petitioner was personally acquainted with the District Attorney and for all intents and purposes they were from and occupied the same political, social and professional status. With such a background, and as a brother lawyer, petitioner approached the District Attorney with the request that "they talk alone" after having made prior arrangements for a conference. The District Attorney either knew or should have known the purpose of the arranged conference as is evident by his preparation to record the conversation. Leading petitioner to believe that they would be alone and speak in privacy, the District Attorney excluded all others from the office but never revealed the presence of "the uninvited ear."

This Court has on numerous occasions, without the necessity of citation, held that ours is an adversary system and not inquisitorial. It is absolutely essential in an adversary system that a client communicate in complete confidence with his attorney and divulge every detail resting secure, however, with the knowledge that his attorney is strongly obligated to keep his confidence and not to act in any manner which would prejudice the client. Equally essential to the functioning of such a system is that lawyers, District Attorneys,

and Judges speak freely to one another on matters concerning their clients, as well as themselves, feeling secure in the fact that such information will not be divulged and certainly not without prior notice. It is true in the instant case that petitioner voluntarily went to the District Attorney's Office but the statements made were with the understanding that they would be held confidential. Additionally, the only purpose for petitioner's visit was to obtain a favor for himself or his client and therefore, everything related was with the hope or promise of some favorable action on the part of the District Attorney. The District Attorney was certainly aware of petitioner's intentions, as evidenced by the bugging, and certainly knew or should have known that petitioner would speak freely to him.

In spite of this knowledge, the District Attorney never warned petitioner of his rights, nor did he advise him to the effect that anything he might say could be held or used against him in Court. It is submitted that such conduct on the part of the District Attorney is a complete failure to observe that fundamental fairness essential to the very concept of justice and necessarily constitutes a denial of due process. Blisenba v. California, 314 U.S. 219, 62 S.Ct. 280.

WHEREFORE, petitioner prays that this petition be granted and that a writ of certiorari issue, directed to the Supreme Court for the State of Louisiana, commanding that Court to certify and send to this Honorable Court, for its review and determination, a full and complete transcript and record of all proceedings on the cause entitled "State of Louisiana v. Jack C. Fruge" bearing No. 48,472 on the docket of the Supreme Court for the State of

Louisiana, to the end that the judgment and opinion of said Court may be reversed by this Honorable Court;

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

Sam J. D'Amico
Reymond Building
Baton Rouge, Louisiana

Robert L. Kleinpeter
Trial Attorney
Of Counsel
P. O. Box 66443
Baton Rouge, Louisiana

CERTIFICATE

I, the undersigned, of counsel for petitioner, hereby certify that I have served a copy of the foregoing petition on the Attorney General, Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana and on the Honorable Sargent Pitcher, District Attorney, Court House Building, Baton Rouge, Louisiana, postage prepaid.

Robert L. Kleinpeter
Attorney for petitioner

APPENDIX A

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

STATE OF LOUISIANA * NUMBER 50,345

VS. *

JACK C. FRUGE * MOTION TO SUPPRESS

Now into Court, through undersigned counsel, comes JACK C. FRUGE, defendant in the above entitled and numbered cause and suggests to the Court as follows:

1.

That your accused has been informed and therefore acting upon information and belief, to the effect that the District Attorney has in his possession and intends to use upon the trial of this cause certain statements, admissions and/or confessions, allegedly made by your accused.

2.

That if any remarks of the accused were obtained by the District Attorney or any other persons acting for and on his behalf then the same were obtained at a time when your accused, prior to indictment, visited the District Attorney's Office at the invitation of the District Attorney, whereby your accused, as a duly licensed attorney at law intended to discuss and did discuss certain facts relative to another person and/or client.

3.

That if any such admissions, statements, and/or confessions were made, all of whch your accused specifically denies, then any such statements, admissions or alleged confessions were not voluntarily made, nor did they relate to your accused; that the same were surreptitiously obtained without any notice or knowledge on the part of your accused and in the absence of any counsel properly representing your accused. That, accordingly, any such alleged evidence, the existence of which your accused emphatically denies, should be suppressed as having been obtained in violation of the State and Federal constitutional rights of your accused and more particularly in violation of the constitutional prohibition, both State and Federal, against self-incrimination, as well as all other State and Federal laws and constitutional principles applicable hereto; that the said statements, admissions and/or confessions would have to be obtained by secret interrogation and through surreptitious methods and therefore should be suppressed.

WHEREFORE, your accused prays that this motion to suppress be sustained and that any such alleged statements, admissions and/or confessions be ordered suppressed and not used as evidence on the trial of this cause and for such additional relief as the law, equity and the nature of the case may permit.

By Attorney:

Robert L. Kleinpeter
P. O. Box 66443
Baton Rouge, Louisiana
Attorney for Jack C.
Fruge

APPENDIX B

STATE OF LOUISIANA

v.

Jack C. FRUGE.

No. 48472.

Supreme Court of Louisiana.

Nov. 6, 1967.

Rehearing Denied Dec. 11, 1967.

FOURNET, Chief Justice.[1]

The defendant, charged by indictment with theft,[2] was prosecuted, as reflected

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1. Because of the importance of this case, involving, as it does, the appeal of an official of this state from his conviction as a principal on an indictment charging him with theft, the decision was not handed down prior to adjournment of the court in June of 1967 in order that each member of the court, if desired, might be afforded an opportunity to review the record in the case during the summer months.

2. "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential." R.S. 14:67.

by the state's Bill of Particulars, as a principal,[3] in that he aided and abetted one Elouise Stegall in committing the offense. In this appeal from his conviction and sentence he relies on all of the bills reserved and perfected during the course of the trial; however, we think that, taken together, they constitute only two issues, the first being that the act charged in the indictment, as the facts upon which it is based are detailed in the state's Bill of Particulars, even if entirely true, does not constitute theft as defined in the Criminal Code. In other words, defendant contends the facts upon which the indictment is based as given in the Bill of Particulars do not constitute the crime of theft; consequently, even if proved in their entirety, this would still not be sufficient to prove such a charge within the meaning and contemplation of R.S. 14:67.

[1,2] The indictment was drawn in strict conformity with the short form specifically authorized in Article 235 of the Code of Criminal Procedure and is, therefore, valid on its face.[4] And, when considered in the light of the detailed facts furnished by the state, which will be referred to more particularly hereinafter, it is evident the defendant

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3. R.S. 14:24 provides that "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

4. R.S. 15:235 provides it is sufficient, in charging theft, to state in the indictment that "A.B. committed a theft of *** (describe property and subject of theft and state its value)."

was sufficiently apprized of the nature and cause of the accusation against him, and also that is sufficient to protect him against a subsequent prosecution for the same act. Futhermore, although the appellate jurisdiction of the Supreme Court is specifically limited by the Louisiana constitution to questions of law alone,[5] when it is asserted, as here, that there is a total lack of evidence to support the conviction of the crime charged, or any element thereof, this raises a question of law that is subject to our review.[6]

As revealed by the record, the undisputed facts, so far as pertinent to the issues in this case, are that according to the rules of the Louisiana State Senate each senator is allowed to employ a secretary of his own choice to serve him during each day the legislature is in session, and this secretary is paid out of money appropriated by the legislature to

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5. Section 10 of Article VII of the constitution provides: "The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed." (The emphasis has been supplied.)

6. State v. Holder, 159 La. 82, 105 So. 232; State v. McDonnell, 208 La. 602, 23 So. 2d 230; State v. Mattio, 212 La. 284, 31 So. 2d 801, certiorari denied 332 U.S. 818, 68 S.Ct. 145, 92 L.Ed. 395; State v. Roberts, 224 La. 491, 70 So.2d 100; State v. Heiman, 227 La. 235, 79 So.2d 78; State v. Kelly, 241 La. 725, 131 So. 2d 43, and the authorities therein cited.

cover expenses of the session at the rate of $10 a day unless the senator is chairman of a committee, in which event the rate is $15 a day. Such secretaries have no duties other than as prescribed by the individual senator who employes them, and are subject to no supervision of any kind by the senate or any of its officials. This is clearly established by the testimony of the senate's secretary, Charles William Roberts,[7] who testified as a witness for the state,

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7. The pertinent testimony of Mr. Roberts while under cross-examination, beginning at page 357 of the record, is as follows:
Q. With reference to the secretary, as a matter of custom, can any Senator, including Senator Jack Fruge, recommend anybody he wants, including his wife or his son or his mother or anybody like that?
A. That is correct.
Q. And it would not make any difference to you as the Clerk of the Senate or to the Lieutenant Governor so long as that recommendation was given by the Senator, isn't that right?
A. That is correct sir.
Q. So it would be at the entire disposal of the particular Senator as to what it would do with the money that was allotted to him for a secretary, isn't that right?
A. That is correct, sir. The duties of that secretary do not come under, that is not a part of my supervision, and it is not a part of the operation we are doing there. It is whatever the Senator has decided.
Q. Whatever the Senator wants to do with that money or what he wants to do with his secretary is left up to him, is that correct?
A. That is correct, sir.

(Continued on next page)

and is corroborated by a stipulation of counsel to the effect that if the Lieutenant Governor, who serves as ex-officio president of the senate, were called to testify his testimony would be for all intents and purposes the same.

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7. (Continued)
Q. In other words, the secretaries don't have to report to you in the Senate or anybody else in the Senate, is that right?
A. That is correct, sir.
Q. They do not have any prescribed, detailed work for anybody, is that correct?
A. For the Senator is what they are working for. They don't have any other duties as far as I am concerned.

* * * * *

Q. And it is left up to the individual Senator to do what he wants, is that right?
A. That is correct, sir.
Q. There is no requirement that the secretaries report to any office, is that correct?
A. That is correct.
Q. There is no requirement that they perform any type of services at all except what the Senator might want or might not want done, is that correct?
A. What he instructs them to do.
Q. It is more in the nature of a political patronage then, isn't it?
A. Well, that would be for you to say, sir.

* * * * *

Q. And all the requirements you all have in the Senate is that a recommendation slip be signed by the Senator and you get a Withholding Exemption Form and the Social Security number and address so you can mail the W-2 form, isn't that correct?

(Continued on next page)

In conformity with these senate rules the defendant, as Chairman of the Senate's Judiciary A. Committee secured the services of one Elouise Stegall to take care of his secretarial needs as a senator during the 1962 and 1963 sessions. Miss Stegall, being a full-time employee of the Conservation Department of the state at the time, could not be carried on the payroll of the senate because of the dual office holding law;[8] hence, it was agreed, with the full consent and cooperation of her sister, Mrs. Mary Lou Alsobrooks, that the sister's name would be placed on the payroll while she (Miss Stegall) would do the secretarial work required of her by the defendant and receive the salary. Prior to the 1963 session, however, because of the sister's request that her name no longer be used in this manner in view of the marital difficulties she was then having with her husband, Miss Stegall requested that the defendant place the name of Charlyn Stokes on the payroll, which he did after she furnished him with a withholding certificate purportedly signed by Charlyn Stokes and on

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7. (Continued)
A. Yes sir.
Q. And the rest of it is left to the discretion of the Senator?
A. That is correct, sir. (All emphasis has been supplied.)

8. The pertinent part of R.S. 14:137 provides that "Dual office holding is committed when any person holding or exercising any office, position, or employment of profit, in one of the three departments of government of the State of Louisiana, holds or exercises another office, position, or employment of profit: (1) In the same department or any other department of the State of Louisiana * * *."

which was listed her social security number and address. It was shown during the trial, however, that this lady's name was listed on the payroll without her knowledge or consent,[9] and that the checks issued in her name during the 1963 session were cashed by Miss Stegall after she forged the endorsement of the payee thereon. One of these checks forms the basis for this prosecution.[10]

Defense counsel argues that inasmuch as the evidence unmistakably shows the defendant received none of the money; that it was appropriated by the legislature for the specific purpose for which it was, in fact, used, i.e., to pay for secretarial services rendered Senator Fruge in accordance with his requirements during the 1963 session, it cannot be said the subject money was stolen from the state because the state has received full value therefor. Counsel argues, additionally, that the placement of the name of Charlyn Stokes on

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9. On cross-examination Charlyn Stokes admitted she was told later in the year about the arrangements her mother-in-law made with Miss Stegall, but she thought it involved personal checks of Senator Fruge. See, transcript, page 329.

10. Some 24 indictments were returned, 16 against Senator Fruge and 8 against Miss Stegall. In none of these were they charged jointly. Both were charged individually with theft under R.S. 14:67 and with forgery under R.S. 14:72 as to each and every check issued to Mrs. Alsobrooks and Charlyn Stokes. In addition, Senator Fruge was charged with public payroll fraud under R.S. 14:138, and with conspiracy to commit each and every one of these respective crimes under R.S. 14:26. Senator Fruge alone has been brought to trial, Miss Stegall having turned state's witness.

the payroll instead of that of Miss Stegall, who actually did the work, does not detract from the fact that such conduct fails to come within the scope of the theft article. He argues, still further, that if the fact the name of Charlyn Stokes was used without her consent, and Miss Stegall forged the endorsement of this lady to secure the money, is deemed to constitute the fraud necessary to support a charge of theft, then the defendant could not be a principal to such a charge on this basis because the record unmistakably discloses he had no knowledge whatever as to the lack of consent by Charlyn Stokes and the forgery of her name until the investigation of the matter was called to his attention.

Because of these facts, counsel argues in brief that in considering them "besides recognizing that criminal and penal statutes are strictly construed, we must likewise recognize that our theft article is broadly stated and very general in terms. In interpreting this article, particularly where it is a question where the given facts fall within its prohibition, strong consideration must be given to the point that at the same time as R.S. 14:67 was adopted, as part of the Criminal Code, the legislature included other specific articles denouncing in very specific terms the conduct charged. R.S. 14:137, 14:138 and 14:139 all denounce conduct on the part of public officials or employees with relation to their public employment encompassing dual office holding, public payroll fraud, and political payroll padding. * * * That the legislature did not intend this conduct to be theft is demonstrated by the inclusion in the code of these specific sections. While it is true that R.S. 14:4 permits the district attorney to prosecute under more than one section where

conduct is clearly covered by more than one section, there must first be a finding, as a matter of law, that both sections are applicable. In making this determination, a basic rule of statutory construction, more strictly applied in criminal cases, is applicable. In this case, any doubt as to whether conduct of this sort is covered by the theft article should be resolved in the negative, where the conduct charged fits exactly into the specific sections and does not go beyond the conduct specifically denounced in any respect."

Counsel points out further that the defense contention "in this respect is fortified by the history of the particular sections in question, and by the reporters' notes concerning each." The notes under R.H. 14:67 point out that nearly 50 independent statutes previously in existence were merged into the theft article. Significantly, the statutes then in existence dealing with dual office holding, etc., are not among those listed. Equally significant are the source notes of R.S. 14:137, 14:138, and 14:139, each citing a statute then in existence as the basis for the article in the then new code.

[3] This argument would seem to logically follow, but it is clear the theft article in its broad and all embracive language include the conduct forming the basis of the charge in this case; hence, the district attorney, under the express provisions of the Criminal Code had the discretion of proceeding under either the general article or the special article.

It is apt to observe here that the defendant did not, in fact, receive any of the funds forming the basis for this

prosecution, but, as stated above, he is charged as a principal in that he aided and abetted Miss Stegall, who rendered the secretarial services he required and received the funds the state allotted him to pay for such services; and that the record is totally lacking in any evidence whatsoever to show that the defendant had any knowledge of the fact that the name of Charlyn Stokes was being used without her consent, or that her signature on the check had been forged until the commencement of the investigation in the instant case, which was a year later. All of this, when considered with the custom and rules of the senate in existence at the time with respect to the selection and duties of the secretaries to senators, would seem to lend support to the defendant in his belief that he had done no wrong and that his entire conduct was in conformity with the customs and rules of the senate.[11] Nevertheless, the appellant knew that Elouise Stegall could not be employed as his secretary during the legislative session for the simple reason that this was prohibited by law since she was at the time already employed in another department of the state government. The fact that he used another name to accomplish this does not detract from the fact that the money was secured from the state and given to Miss Stegall contrary to law.

This brings up for our consideration the other issue we must resolve, i.e., the one relating to the admissibility of a verbal conversation between the district

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11. It seems obvious these were considered as mitigating circumstances by the trial judge, for he suspended the sentence imposed and the accused was "placed on unsupervised probation."

attorney and the defendant, the electronic recording thereof taken without defendant's knowledge, and a transcription of which was made by the district attorney's secretary. The defendant sought to have these excluded under a motion to suppress and objections to their admissibility when they were offered at the trial on the ground they were assertedly not freely and voluntarily given, and for other reasons that are not urged on this appeal.

In his per curiam to the motion to suppress, the trial judge advises he found that on May 1, 1964, Elouise Stegall made a statement to one of the assistant district attorneys which implicated the defendant. On the following day, when the Senator was informed by the Lieutenant Governor that an investigation was being conducted by the district attorney's office which involved persons he had recommended for senate secretarial jobs, he telephoned the district attorney at his home to discuss the matter. The district attorney, in substance, told him he could not talk at that time and suggested the defendant come to his office on Monday, May 4, 1964. On that day Senator Fruge appeared at the office and requested a private audience, whereupon all others were excluded from the room in apparent acquiescence. However, unknown to the Senator the district attorney had "bugged" his office with an electronic recording device, and their conversation was also monitored by an assistant in another office. During the course of this conversation the defendant made inculpatory statements.

Counsel for the defendant contends this so-called confession cannot be said to have been voluntarily made under these circumstances, claiming the mere fact it was not induced by a promise or threat is

not enough where it is secured unfairly, because a confession can only be voluntary in law if, and only if, it is voluntary in fact. He cites State v. Henry, 196 La. 217, 198 So. 910; and State v. Graffam, 202 La. 869, 13 So.2d 249.

From a reading of the transcription of this conversation it is clear that the Senator had no idea at the time that the investigation involved him personally. It is equally clear that he approached the district attorney in the belief that as a fellow lawyer, and because of their personal friendship, together with the further fact the state had suffered no loss due to the actions of Miss Stegall, he could convince the district attorney to use his good offices in not prosecuting Miss Stegall, and thus protect him and his family from the unfavorable publicity that would ensue.

[4,5] Inculpatory statements are governed by the law applicable to confessions[12] and we are constrained to hold in the instant case that the conversation between the district attorney and the defendant, admitted over defense objection, including as it does inculpatory statements, was voluntarily made. While it may be said that these statements resulted from

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12. State v. Robinson, 215 La. 974, 41 So. 2d 848; State v. Domino, 234 La. 950, 102 So.2d 227; State v. Clark, 228 La. 899, 84 So.2d 452; State v. Jones, 230 La. 356, 88 So.2d 655; State v. Palmer, 232 La. 468, 94 So.2d 439; State v. Maney, 242 La. 223, 135 So.2d 473; State v. Bueche, 243 La. 160, 142 So. 2d 381; and State v. Andrus, 250 La. 765, 199 So.2d 867.

defendant's misplaced confidence, there is nothing about them to impugn their voluntary character. The electronic recording of the conversation was also properly admitted for the purpose of corroborating the testimony of the district attorney with respect thereto, as well as to whether it was given voluntarily. State v. Melerine, 236 La. 929, 109 So.2d 471. It would be different if the recording device had been secretly installed in the Senator's office, home, or automobile, or, conceivably, upon his person. That would involve an invasion of his privacy, a trespass which would present consitutional questions of grave import. Here, however, it was Senator Fruge who sought the district attorney in his office. See, Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462.

For the reasons assigned, the conviction and sentence are affirmed.

APPENDIX C

NUMBER 48,472

SUPREME COURT OF THE STATE OF LOUISIANA

Filed: SUPREME COURT OF LOUISIANA

FILED Dec 14 1967

s/ V.J. Courville
Clerk of Supreme Court
Clerk

STATE OF LOUISIANA

Plaintiff

VS

JACK C. FRUGE

Defendant

PETITION FOR STAY OF MANDATE

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of Jack C. Fruge, defendant in the above entitled and numbered cause respectfully represents:

1.

That the decree of this Honorable Court, rendered on the 6th day of November, 1967 and the refusal of his application for rehearing on the 11th day of December, 1967, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, is now final.

2.

That the opinion and decree of this Honorable Court deprives petitioner of the right guaranteed him under Article 5, as well as the Fourteenth Amendment of the Constitution of the United States in that it deprived petitioner of his constitutional privilege against self-incrimination and further deprives petitioner of his liberty without due process of law for the following reasons, to-wit:

(A) That petitioner's conviction was based upon a statement illegally obtained by the District Attorney by the use of secret, hidden recording devices at a time when petitioner was under investigation for the alleged crime without giving petitioner any forewarning as to the investigation nor that anything he might say would be used against him.

(B) That any and all statements made by petitioner were made in confidence and conditioned upon the fact that they would not be used against him and the failure of the District Attorney to properly inform petitioner of his rights amounted to trickery, deceit and deception, all of which made the statements so obtained involuntary and deprived petitioner of his freedom and rights without due process of law and in violation of his privilege against self-incrimination.

3.

That petitioner is desirous of applying to the Supreme Court of the United States for a writ of certiorari and review, or appeal, to review the decision of this Honorable Court upon the issues hereinabove raised and as shown by the record in this case; that petitioner desires that he be given a stay or delay in which to apply to said Court; that the decree or mandate of this Honorable Court be stayed so that petitioner will have an opportunity toso present his application to the Supreme Court of the United States for relief.

WHEREFORE PETITIONER PRAYS THAT after due consideration that this Honorable Court grant him a reasonable stay of execution and that he be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States his application for a writ of certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be withheld accordingly.

By Attorneys:

s/ Robert L. Kleinpeter

Robert L. Kleinpeter
Attorney at Law
P. O. Box 66443
Baton Rouge, Louisiana

C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing petition and application is made in good faith and believe that petitioner is entitled in law to the relief sought and that a copy thereof has been mailed to Honorable Sargent Pitcher, Jr., District Attorney for the Parish of East Baton Rouge, State of Louisiana.

Baton Rouge, Louisiana, this 13th day of December, 1967.

s/ Robert L. Kleinpeter
Robert L. Kleinpeter

ORDER

The foregoing motion and certificate considered:

LET petitioner be granted a stay of execution of the decree of this Honorable Court for a period of 90 days.

New Orleans, Louisiana, this 14th day of December, 1967.

/s/ John B. Fournet
Chief Justice

(Seal)
A TRUE COPY
Clerk's Office, New Orleans Dec. 14, 1967
s/ Harold A. Moise, Jr.
Clerk Supreme Court of
Louisiana